

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 99-0036
SALES AND USE TAX
FOR TAX PERIODS: 1995-1997

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Issue

Sales and Use Tax: Purchase for Resale Exemption

Authority: IC 6-2.5-3-2 (a), IC 6-2.5-5-8, IC 6-8.1-5-1 (b).

Taxpayer protests the imposition of gross retail tax on an airplane.

Statement of Facts

Taxpayer is in the business of selling, servicing and repairing recreational vehicles along with over the counter sales of parts and accessories. After an audit, additional sales and use tax, interest and penalty were assessed. Taxpayer protested a portion of the assessment and a hearing was held. A Letter of Findings was issued on September 22, 2000. Taxpayer was granted a rehearing on one issue. Taxpayer submitted additional information. Further facts will be provided as necessary.

Discussion

In 1996 Taxpayer purchased an airplane without paying sales or use tax. IC 6-2.5-3-2 (a) imposes the use tax "on the storage, use, or consumption of tangible personal property in Indiana." There are several statutory exemptions to the use tax. Taxpayer contends that its purchase and use of the airplane qualifies for exemption pursuant to IC 6-2.5-5-8 as follows:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property.

The tax assessment is presumed to be correct. Taxpayer bears the burden of proving that the assessment is incorrect and the airplane qualifies for the resale exemption. IC 6-8.1-5-1 (b).

At the original hearing Taxpayer submitted a copy of its aircraft dealer license, documentation that the dealer aircraft inventory tax was paid on this airplane, copies of advertisements for this and another airplane, evidence that it traded for and sold airplanes in its regular course of business and evidence that the subject airplane was actually sold. The Indiana Department of Revenue held against Taxpayer because Taxpayer held the airplane for almost three years before it was sold and the insurance policy indicated that the airplane was insured for personal use.

As additional evidence that the airplane qualified for the purchase for resale exemption, Taxpayer submitted a letter from an airplane repair concern. That letter indicated that the repair concern took control of the airplane on November 25, 1997 for repairs. Because of several problems, the airplane repair work was not completed until October 14, 1998. Taxpayer contends that it could not sell the airplane while it was under repair and this explains why it held the plane for almost three years before it was sold. It was, however, a year before the plane was taken in for repairs. The problem appears to have been a rubber grommet which was sucked into the engine causing major repairs. This problem indicates that the plane was flown during the first year Taxpayer owned it.

Taxpayer also submitted a letter from the insurance agent. That letter indicated that the plane was insured for business and personal use. A plane insured for personal use clearly is not being held merely for resale.

Taxpayer failed to sustain its burden that the airplane qualified for the purchase for resale exemption.

Finding

Taxpayer's protest is denied.